

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA**

In re:)	
GMX RESOURCES, INC., et al.,¹)	BK-13-11456-SAH
)	Chapter 11
Debtor.)	

**OBJECTION AND COMMENTS OF THE UNITED STATES TRUSTEE
TO THE JOINT PLAN OF REORGANIZATION (Docket #917)**

The United States Trustee (“UST”) sets forth the following objection and comments to regarding confirmation of the “First Amended Joint Plan of Reorganization Of GMX Resources Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code.” Docket #917. In support of this objection, the UST states as follows:

1. The debtors filed their respective voluntary petitions seeking relief under chapter 11 of the United States Bankruptcy Code on April 1, 2013.²
2. The proposed joint plan provides for transfer of the bulk of the debtor estates to certain secured bondholders. Article IV at ¶ 4.01, Docket #917 at p. 27.
3. The release provisions, as they pertain to non-debtors,³ set forth in Article XIII of the proposed plan are in violation of section 524(e) and, potentially section 1141(d)(3), as the debtor estates are not truly reorganized under the plan. Docket #917, pp. 59-62.
4. There is strong body of authority that a Bankruptcy Court lacks the power to confirm a plan containing non-debtor release provisions. Ralph Brubaker, *Nondebtor Releases and Injunctions in Chapter 11: Revisiting Jurisdictional Precepts and the Forgotten Callaway v. Benton Case*, 72 Am. Bankr. L. J. 1 (1998); Peter E. Meltzer, *Getting Out of Jail Free: Can the Bankruptcy Plan Process Be Used to Release Nondebtor Parties?*, 71 Am. Bankr. L. J. 1 (1997).

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, include: *GMX Resources Inc.* (4474), *Diamond Blue Drilling Co.* (7463), *Endeavor Pipeline, Inc.* (3948).

² Reference to the Bankruptcy Code shall mean 11 U.S.C. §§ 101-1532.

5. The issue of a third-party plan release in the form of a permanent injunction has been addressed by the Court of Appeals for the Tenth Circuit which denied the injunction as part of the debtor's plan. *In re Western Real Estate Fund*, 922 F.2d 592, 601-06 (10th Cir. 1990), *modified sub nom on other grounds, Abel v. West*, 932 F.2d 898 (10th Cir. 1991).
6. Section 1129(a)(1) requires that a plan comply with all the applicable provisions of the Bankruptcy Code to be confirmable.

WHEREFORE, based on the forgoing, the UST objects to confirmation of the "First Amended Joint Plan of Reorganization Of GMX Resources Inc. and Its Debtor Subsidiaries Under Chapter 11 of the Bankruptcy Code" as currently proposed; and requests such other and further relief as this Court deems just, equitable and proper.

Respectfully submitted

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UNITED STATES TRUSTEE

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³ Included within the defined terms set forth in the proposed plan as "Exculpated Party," "Protected Persons," and "Released Parties." Docket #917 at pp. 11, 18-19.